

**BEFORE THE FEDERAL ELECTION COMMISSION**

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**MUR 7135**

**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT,  
DONALD J. TRUMP, AND PAUL MANAFORT, AS FORMER CAMPAIGN  
CHAIRMAN, AND TIMOTHY JOST AS TREASURER, TO THE COMPLAINT**

By and through undersigned counsel, Donald J. Trump for President, Inc., Donald J. Trump, Paul Manafort as former Campaign Chairman, and Timothy Jost as Treasurer ("Respondents") respond to the Complaint in the above-captioned MUR. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

**I. BACKGROUND**

Donald J. Trump announced his candidacy for President of the United States on June 16, 2015.<sup>1</sup> Mr. Trump's principal campaign committee is Donald J. Trump for President, Inc. (the "Campaign"). Paul Manafort is the former Chairman of the Campaign. In his capacity as Campaign Chairman, Mr. Manafort frequently made media appearances where he discussed issues related to the Campaign. That included the appearance on Fox and Friends noted in the Complaint, as well as countless others. In such media appearances, Mr. Manafort answered questions, discussed campaign strategy, and offered his view on broad election themes as senior political strategists routinely do. The Complaint twists Mr. Manafort's informal banter with the hosts of a morning news show and an unrelated and lawful appearance as a special guest at an independent expenditure-only committee event nearly one week later into a fantastical theory of campaign finance law violations that is not supported by the facts or the law.

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<sup>1</sup> Although the Complaint purports to name Mr. Trump personally, there are no allegations that pertain to him personally. We request that Mr. Trump be dismissed from this matter; to the extent he is relevant to this matter, it is only in his capacity as a candidate whose principal campaign committee is Donald J. Trump for President, Inc.

First, it alleges that when Mr. Manafort was asked whether Sheldon Adelson had been asked to contribute \$6 million to the Republican National Convention, he said he had "no idea," but would "like" Mr. Adelson to write a check to "the Trump campaign for that amount of money if he could." As is apparent from the video clip of the interview, Mr. Manafort's comments were directed at the show's hosts (not Mr. Adelson). They made clear that he had no knowledge of any actual contributions or solicitation of contributions (rather than familiarity with Mr. Adelson's donations). They focused on the Campaign (not on any independent expenditure-only committee). They were expressly qualified with Mr. Manafort's understanding that an individual *cannot* make a \$6 million contribution to a presidential campaign ("if he could"). In sum, they were quite obviously an instance of Mr. Manafort making a light-hearted comment, as Mr. Manafort's tone, facial expression and remarks qualifying his aside ("if he could") make clear. That comment was not, as the Complaint alleges, Mr. Manafort making some sort of indirect, public solicitation of Mr. Adelson for a \$6 million contribution to an independent group. In fact, Mr. Manafort made no mention of the group for which he was allegedly soliciting a contribution or any other independent group in the course of his eight-minute interview with Fox.

Complainant then attempts to connect these comments to Mr. Manafort's appearance by telephone nearly a week later at an event hosted by Rebuilding America Now, an independent expenditure-only committee. As Commission guidance permits, Mr. Manafort spoke at the event, providing a briefing regarding the Campaign. Complainant purports to provide the Commission with Mr. Manafort's comments at the event, but the quotation included in the Complaint is not a direct quotation of Mr. Manafort's remarks. Rather, it is a quotation from a news story reporting the comments of Alex Castellanos, a representative of Rebuilding America

Now, in which Castellanos purports to summarize Mr. Manafort's comments at an event that occurred two days prior.

In sum, the facts in the Complaint do not support the allegations, which are meritless and do not give rise to reason to believe a violation has occurred. The Complaint should be dismissed.

## **II. ANALYSIS**

### **A. Joking on Television About Potential Contributions Does Not Meet the Definition of a 'Solicitation' under Commission Regulations and Precedent.**

The primary focus of the Complaint is an off-hand comment Mr. Manafort made on television that he would "like" Mr. Adelson to give \$6 million "to the campaign ... if he could." Mr. Manafort made this comment in the course of banter with morning news show hosts, smiling after he said it. During the interview he never mentioned any independent expenditure-only committee, let alone the committee to which the Complaint alleges he solicited the contribution. This statement was not a solicitation within the definition of the term under Commission regulations and precedent. There is thus no basis to believe that it violated the Act.

In adopting the current definition of "solicitation" in 2006, the Commission noted that "words that would by their plain meaning normally be understood as a solicitation, may not be a solicitation when considered in context, such as when the words are used as part of a joke or parody." *Explanation and Justification for Definitions of "Solicit" and "Direct,"* 71 Fed. Reg. 13926, 13929 (March 20, 2006) (hereinafter "2006 Solicitation E&J"). The Commission recently followed this guidance in rejecting an indistinguishable Complaint—filed by the same complainant that filed this one—against Mike Huckabee and an independent expenditure-only committee that supported his presidential campaign. See MUR 6939 (Mike Huckabee, *et al.*). In recommending that the Commission dismiss the Complaint, the Office of the General Counsel

noted that the test for whether something should be considered a solicitation under the regulations is "objective and does not turn on the subjective interpretations of the speaker or the recipients." First General Counsel's Report in MUR 6939 at 5 (September 22, 2015) (citing 11 CFR 300.2(m) and the 2006 Solicitation E&J).

The facts in the Huckabee matter were similar to these. In that instance, Mike Huckabee announced his presidential campaign before a crowd, in the course of which he said: "I will be funded and fueled not by the billionaires, but by working people across America who will find out that \$15 and \$25 a month contributions can take us from Hope to higher ground." *Id.* at 2. He then also said: "Now, rest assured, if you want to give a million dollars, please do it." *Id.* There, like here, the Complaint alleged "that while Huckabee's own campaign could not accept a million-dollar contribution, the solicitation actually was for PAG [Pursuing America's Greatness], an entity which could accept unlimited contributions." *Id.* at 3.

Finding that Huckabee's comments did not meet the definition of a "solicitation," the General Counsel's Report explained that, "[a]lthough Huckabee's remarks literally called for a listener to make a contribution in an amount outside of the limits of the ... Act," "taken in context, we conclude that Huckabee made his remark in jest and that an objectively reasonable observer would have understood as much." *Id.* at 1-2. OGC noted that Huckabee's conduct, facial expressions and tone provided the context to make clear that this was a humorous aside. In addition, OGC also emphasized the fact that he "did not directly or indirectly refer to or mention" the Super PAC supporting Huckabee's candidacy at any point in his speech. *Id.* at 4.

The same analysis governs here and is an easier case than MUR 6939. In addition to his obvious tone and facial expression making clear that he was making a humorous aside, Mr. Manafort made clear he was *not* proposing a contribution to the Campaign by expressly limiting

his remarks with the caveat "if he could." As such, there was no reason to believe that Manafort was making a solicitation to the Campaign in excess of the contribution limits.<sup>2</sup> Furthermore, in the course of his interview with Fox, Mr. Manafort did not mention or refer to any independent expenditure-only committee. As such, there is no plausible basis for concluding that Mr. Manafort's comments referred to Rebuilding America Now or any other independent expenditure-only committee. The Commission should accordingly find no reason to believe a violation has occurred, dismiss the Complaint, and close the file.

**B. Manafort's Briefing at a Super PAC Event Was Not a Solicitation Under Commission Regulations.**

As mentioned above, the Complaint fails to include any credible evidence regarding the nature of Mr. Manafort's comments at the Rebuilding America Now briefing. Instead, the "quotation" that it cites is classic hearsay: a third party's purported summary of Mr. Manafort's comments as recollected to news reporter and reported in a story published two days after the event took place. However, even accepting the third-hand summary of Manafort's comments as true, which we do not concede, they do not meet the definition of a solicitation under 11 CFR §300.2(m). The comments did not provide a method of making a contribution (300.2(m)(1)(i)); they did not provide instructions on how or where to send a contribution (300.2(m)(1)(ii)); they did not identify a web address to make an on-line contribution (300.2(m)(1)(iii)); and they were not akin to any of the multiple examples of oral solicitations offered in 300.2(m)(2). Those examples each contain a reference to money or financial support. Here, the summary of Mr. Manafort's comments suggests he offered nothing more than a general expression of political support akin to those examples which the regulations expressly state are *not* solicitations. For

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<sup>2</sup> While Complainants do not develop the allegation further, the heading of subsection 2 of their Legal Argument notes that "Mr. Manafort made a solicitation on behalf of the Trump Campaign." In the interest of ending further inquiry into whether there was an unlawful solicitation on behalf of the Campaign, we address it here.

example, 300.2(m)(3)(iv) states that a comment such as, "Thank you for your continuing support," offered at a GOTV rally would not constitute a solicitation. Therefore, as a matter of law, the Commission should dismiss this Complaint and close the file.

**C. Manafort's Comments Followed Established Commission Precedent That Permits Federal Candidates and Their Agents to Speak at Events of Entities that Solicit Non-Federal Funds.**

Furthermore, the Complaint does not include any evidence that Mr. Manafort's comments at a briefing held by a Super PAC went beyond the Commission's well-established regulations and precedent that permit federal candidates and their agents to attend such events, offer remarks and solicit funds within the federal limits and source prohibitions. *See generally* 11 CFR 300.64(b), *Explanation and Justification for Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events*, 75 Fed. Reg. 24375 (May 5, 2010) (2010 Non-Federal Fundraising E&J), and FEC Advisory Opinion 2011-12 (Majority PAC). As the Commission has explained, "Federal officeholders and candidates, and officers of national party committees, may solicit up to \$5000 from individuals (and any other source not prohibited by the Act from making a contribution to a political committee) on behalf of" a federal independent expenditure-only committee. Majority PAC AO at 3. In addition, Commission precedent allows federal officeholders, candidates and their agents to make a "general solicitation that does not expressly refer to the amount limitations and source prohibitions of the Act at a non-Federal fundraising event" if the solicitation is limited "by displaying a clear and conspicuous written notice or by making a clear and conspicuous oral statement at the event that the solicitation is limited to funds that comply with the limitations and prohibitions of the Act." 2010 Non-Federal Fundraising E&J at 24379-24380. The Campaign was well aware of the regulations and the Majority PAC Advisory Opinion and adhered to these strictures. Since the Complainant offers

no evidence that Mr. Manafort's appearance by telephone failed to comply with these guidelines, the Commission should accordingly find no reason to believe a violation has occurred, dismiss the Complaint, and close the file.

**D. Complainant's Speculation Regarding the Intent of Mr. Manafort's Comments is Unfounded and Mere Speculation is An Insufficient Basis for the Commission to Find Reason to Believe a Violation Has Occurred.**

Complainant falsely asserts that even though Mr. Manafort's comments on Fox referred to the Campaign, they must have been intended to direct contributions to an outside group, which Mr. Manafort addressed the following week. There is no connection between the Fox interview and the subsequent appearance by Mr. Manafort at a Super PAC event, and Complainant offers nothing more than rank speculation to bolster their erroneous allegation that the two events are in fact linked.

The Commission has long made clear that speculation by a complainant is insufficient, and that when a complaint fails to carry its burden and does not establish there is reason to believe that a violation of the Act has occurred, the matter must be dismissed. Similarly, the Commission has held that the burden does not shift to a respondent in an enforcement action merely because a complaint has been filed and accusations made, especially where, as here, the complaint fails to allege facts that state a violation under the Act or Commission regulations. *See, e.g.*, MUR 4850 (Deloitte & Touche, LLP, *et al.*), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 ("The burden of proof does not shift to a respondent merely because a complaint is filed.").

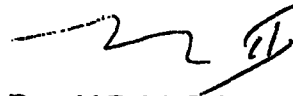
Moreover, a reason to believe finding is warranted only if a complaint sets forth specific credible facts, which, if true, would constitute a violation of the Act. *See, e.g.*, MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish [a violation].").

Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true and cannot support a finding of reason to believe. *See, e.g.*, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 (“Unwarranted legal conclusions from asserted facts will not be accepted as true.” (internal citations omitted)); MUR 4869 (American Postal Workers Union), Statement of Reasons of Chairman Darryl R. Wold, Vice Chairman Danny L. McDonald, and Commissioners David M. Mason, Karl J. Sandstrom and Scott E. Thomas at 2 (complaint failed to alleged violation of the Act). But here, unwarranted legal conclusions and baseless speculation is all that Complainant offers—a facially deficient showing under this Commission’s well-established standards. The Commission should therefore find no reason to believe that a violation has occurred, dismiss the Complaint, and close the file.

### III. CONCLUSION

For the foregoing reasons, we respectfully request that the Commission find no reason to believe a violation has occurred, dismiss the Complaint, and close the file.

Respectfully,



Donald F. McGahn II  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-3939

*Counsel for Donald J. Trump for President, Inc.,  
Donald J. Trump, and Paul Manafort as former  
Campaign Chairman*